IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 371 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANNAMA THOMAS

Versus

M ANWAR, PRINCIPAL

Appearance:

1. Special Civil Application No. 371 of 1991

MR PM THAKKAR for Petitioner

MR MTM HAKIM for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 11/12/2002

ORAL JUDGEMENT

By filing this petition under Article 226 of the

Constitution, the petitioner has prayed to quash and set aside order dated November 21, 1987, passed by the Principal, Sainik School, Balachadi,Jamnagar, by which the pay of the petitioner was stopped at efficiency bar stage i.e. at Rs.1800/- per month. The petitioner has also prayed to quash and set aside order passed by the appellate authority as incorporated in the communication dated July 21, 1988 addressed by the Principal of the School to the petitioner, rejecting her appeal against the order stopping her pay at the efficiency bar stage. The petitioner has further prayed to quash and set aside order contained in communication dated February 9, 1990 addressed by the Registrar of the School to the petitioner informing the petitioner that she was permitted to cross the efficiency bar with effect from November 1, 1989, but she was not entitled to arrears of increments for the period from November 1, 1987 to October 31, 1989.

2. The petitioner is employed as a Matron-cum-Nursing Sister in Sainik School, Jamnagar. Though the petitioner has claimed that she has not received any adverse remarks or any memos or chargesheets regarding performance of her duties as a Matron-cum-Nursing Sister, the contents of the affidavit-in-reply would indicate that her performance was not satisfactory or upto the standard regarding which necessary entries in her service record were made in the years 1984-85 and 1985-86, and by communication dated August 22, 1986, the petitioner was called upon to show cause as to why action should not be taken against her for showing negligence in performance of her hostel duties. For the year 1986-87, following adverse remarks were recorded in the annual confidential report of the petitioner :

> "Smt. A.Thomas lacks initiative and is indifferent towards duty. She is casual and not punctual. She was also advised in writing to show improvement, but showed little improvement."

On the basis of recorded performance of the petitioner for a continuous period of 2 to 3 years, the competent authority i.e. the Principal of the Sainik School was satisfied and of the view that there was steady deterioration in the efficiency of the petitioner and her performance had not improved. Therefore, the Principal of the School passed an order dated November 21, 1987 stopping her pay at efficiency bar stage i.e. at Rs. 1800/- per month, which is produced at Annexure-C to the petition. Feeling aggrieved by the said order,

the petitioner preferred an appeal before the Board of Governors of the School. The appellate authority examined in detail the adverse remarks in the annual confidential report of the petitioner for the year 1986-87 and observed as under while rejecting the appeal :

> "The performance of Smt. A Thomas, Matron-Cum-Nursing Sister has steadily deteriorated warranting stoppage of her increment at E.B. stage. As such the decision of the Principal for stopping her increment at E.B stage based on her poor performance is justified and appropriate."

The averments made in the reply affidavit further indicate that even thereafter for the year 1987-88 there were adverse remarks in the confidential report of the petitioner, which were communicated to her vide letter dated September 7, 1988 and, therefore, she was not permitted to cross the efficiency bar with effect from November 1, 1988. However, on review of the case in the year 1989, it was found that there were no adverse remarks in the petitioner's confidential report for the year 1988-89 and, therefore, she was permitted to cross the efficiency bar with effect from November 1, 1989. Though the appeal filed by the petitioner was rejected by the appellate authority, the petitioner made representation dated January 25, 1990, claiming arrears of increments for the period from November 1, 1987 to October 31, 1989. The same was rejected as is evident from the contents of letter dated February 9, 1990, addressed by the Registrar of the School to the petitioner. The grievance made by the petitioner in the present petition is that stopping her pay at the efficiency bar stage is contrary to Regulation 6.21 of the Regulations framed by the School and, therefore, the order dated November 21, 1987 passed by the Principal by which her pay was stopped at the efficiency bar stage i.e. at Rs.1800/- per month, as well as the appellate order confirming the said order, are liable to be set aside and quashed. The claim advanced by the petitioner is that she is entitled to arrears of increments for the period from November 1, 1987 to October 31, 1989 and, therefore, the decision communicated to her in the letter of the Registrar of the School that she is not entitled to arrears of increments is also liable to be set aside. It is also averred by the petitioner that the orders, which are impugned in the petition, have been passed malafide by the Principal of the School and, therefore, the same should be set aside. What is asserted in the

petition is that without maintaining ephemeral roll as indicated in the decision of the Gujarat High Court in Dr.B.R.Kulkarni v. Government of Gujarat and others, 19 GLR 1021, the decision to stop pay of the petitioner at efficiency bar stage could not be taken and, therefore, the petitioner is entitled to the reliefs claimed in the petition. Under the circumstances, the petitioner has filed the present petition and claimed the reliefs to which reference is made earlier.

3. On service of notice, Mr. M.Anwar, Wg.Cdr. Principal, Sainik School, Balachadi, Jamnagar, has filed affidavit-in-reply controverting the averments made in the petition. It may be stated that the petitioner has not controverted the averments and assertions made in the affidavit-in-reply.

4. The contention that the decision stopping the petitioner's pay at efficiency bar stage is contrary to the provisions of Regulation 6.21 of the Regulations framed by the School and, therefore, the same should be set aside, has no merits. The adverse remarks communicated to the petitioner for the year 1986-87 vide communication dated September 12, 1987 would indicate that the petitioner was lacking initiative and was indifferent in performance of her duties. It would also indicate that she was casual in her approach and was not punctual. What is important is that it was clearly stated in the said communication that though she was advised in writing to show improvement, she had shown little improvement. Thus, there is no manner of doubt that before taking the impugned decision, the appointing authority had carefully perused the recorded performance of the petitioner and formed an opinion that there was steady deterioration in the efficiency of the petitioner. The sub-standard performance was judged by the appointing authority on scrutiny of the recorded performance of the petitioner. As noticed earlier, there were adverse remarks in the service record of the petitioner for the years 1984-85 and 1985-86. Moreover, her case was reviewed in the year 1988, but, as there were adverse remarks in her confidential report for the said year, she was not permitted to cross efficiency bar with effect from November, 1988. The satisfaction derived by the competent authority is based on the service record of the petitioner. The appellate authority also dismissed the appeal filed by the petitioner after taking into consideration the service record of the petitioner. Under the circumstances, it is difficult to uphold the contention of the learned counsel for the petitioner that the decision stopping the petitioner's pay at the

efficiency bar stage,is not in terms of Regulation 6.21 of the Regulations framed by the Sainik School. There being no substance in the said contention, the same is rejected.

5. The plea that because of personal mala fides of the Principal of the School, the petitioner was not permitted to cross the efficiency bar and, therefore, the petitioner is entitled to the reliefs claimed in the petition, cannot be accepted. It may be stated that the decision of the Principal is based on service record of the petitioner and the decision of the principal has been upheld by the Board of Governors of the School, which is constituted under the Regulations, as the appellate authority. Therefore, the averments regarding malafide of Principal against the petitioner do not inspire confidence of the Court. Further, the averments made by the petitioner regarding malafide have been emphatically denied by the Principal in his affidavit-in-reply, to which no rejoinder is filed by the petitioner. Therefore, the Court is of the opinion that the petitioner is not entitled to the reliefs claimed in the petition on the basis that the order stopping her pay at the efficiency bar stage was passed malafide.

6. The last contention that the respondents having failed to maintain ephemeral roll could not have stopped the pay of the petitioner at the efficiency bar stage, is without substance. In Dr.B.R.Kulkarni (supra), the Court was concerned with instructions issued by the Government of Gujarat regarding maintenance of ephemeral roll. However, the learned counsel for the petitioner has failed to point out that there is any requirement in the Regulations framed by the School for maintenance of ephemeral roll. Under the circumstances, the petitioner would not be entitled to any relief on the basis of the decision of this Court in Dr. B.R.Kulkarni (supra). Moreover, a confidential report is intended to be a general assessment of work performed by government servant subordinate to a reporting authority and such reports are maintained for the purpose of serving as data when questions of promotion, confirmation etc. arise. Such reports are not to contain specific instance upon which assessments are made and, therefore, it is wrong to contend that in absence of maintenance of ephemeral roll, the impugned decision could not have been taken.

7. On overall view of the matter, the Court is satisfied that the respondents have taken the decision stopping the pay of the petitioner at efficiency bar stage in accordance with the Regulations framed by the

School. No error in decision making process has been pointed out by the learned counsel for the petitioner. It is well settled that while hearing a petition under Article 226 of the Constitution, the High Court does not exercise the appellate powers. As the respondents were justified in stopping the pay of the petitioner at the efficiency bar stage, the petitioner would not be entitled to arrears of increments for the period from November 1, 1987 to October 31, 1989. Thus, there is no merits in the petition and the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no order as to costs.

(patel) (J.M.Panchal,J.)